

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the investigation, on the)	
Commission's own motion, into the electric supply)	
reliability plans of Michigan's electric utilities for)	Case No. U-18197
the years 2017 through 2021.)	
_____)	

In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	
Section 6w of 2016 PA 341 for CONSUMERS)	Case No. U-18239
ENERGY COMPANY'S service territory.)	
_____)	

In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	
Section 6w of 2016 PA 341 for DTE ELECTRIC)	Case No. U-18248
COMPANY'S service territory.)	
_____)	

In the matter of the application of)	
DTE ELECTRIC COMPANY for authority to increase)	
its rates, amend its rate schedules and rules governing)	Case No. U-18255
the distribution and supply of electric energy, and)	
for miscellaneous accounting authority.)	
_____)	

In the matter of the application of)	
CONSUMERS ENERGY COMPANY for authority)	
to increase its rates for the generation and distribution)	Case No. U-18322
of electricity and for other relief.)	
_____)	

At the May 11, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

OPINION AND ORDER

On March 10, 2017, the Commission issued an order in Case Nos. U-18239 *et al.*, (March 10 order) that stated, in part:

[T]he Commission directs the Staff¹ to convene a technical conferences in Case No. U-18197 to resolve issues raised by the Staff and CNE² in their comments that are amenable to resolution outside of a fully contested case proceeding. More specifically, the Commission directs the Staff to consult with MISO³ and parties to do all of the following by August 16, 2017:

1. Continue to examine resource adequacy issues as part of the annual assessment in Case No. U-18197.
2. Develop recommendations regarding requirements for capacity demonstrations for electric utilities, cooperatives, municipalities, and AESs⁴ in this state subject to [the State Reliability Mechanism or SRM], including filing requirements.
3. Develop recommendations regarding load forecasts, planning reserve margin requirements and locational requirements for capacity resources.
4. Develop recommendations regarding the capacity obligations for load that pays an SRM charge to a utility, including MISO's annual [Planning Reserve Auction or PRA].

March 10 order, p. 19.

Issuance of this follow-up order to the March 10 order that established the above-described technical conferences in Case No. U-18197 is necessary to reinforce the Commission's determination to address certain issues related to its implementation of Section 6w of 2016 PA 341 (Act 341), MCL 460.6w, solely through the use of the technical conferences instead of in the context of contested cases. Specifically, the Commission thought it had clearly indicated in the

¹ This reference is to the Commission Staff.

² This reference is to Constellation NewEnergy, Inc.

³ This reference is to the Midcontinent Independent System Operator, Inc.

⁴ This reference is to alternative electric suppliers.

March 10 order that the format for the demonstration required of an electric utility by Section 6w(8)(a) of Act 341, MCL 460.6w(8)(a) that the utility “owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable” for the “planning year beginning 4 years after the beginning of the current planning year” was to be determined through collaborative efforts in the technical conferences. Likewise, it was the Commission’s intent that the format for the demonstrations required of AESs, cooperative electric utilities, and municipally-owned electric utilities by Section 6w(8)(b) of Act 341, MCL 460.6w(8)(b) also was to be determined through collaborative efforts in the technical conferences.

The Commission is concerned that Consumers Energy Company (Consumers) and DTE Electric Company (DTE Electric) have, in their recently-filed applications in their SRM cases⁵ and in their currently-pending general electric rate cases,⁶ filed testimony pertaining to these capacity demonstration issues and are seeking in those proceedings to adjudicate what may be counted in the capacity demonstration determinations to be made by the Commission. While the Commission recognizes Consumers and DTE Electric may have been attempting to keep options open in various cases to address these issues, the Commission finds that the use of an adjudicative proceeding to resolve these issues is misplaced. Every regulated electric utility, AES, cooperative electric utility, and municipally-owned electric utility will be required by Section 6w(8) of Act

⁵ Consumers’ SRM docket is Case No. U-18239. DTE Electric’s SRM docket is Case No. U-18248. Administrative Law Judge Mark D. Eyster (ALJ Eyster) is assigned to preside over both of these cases.

⁶ Consumers’ rate case docket is Case No. U-18322. Administrative Law Judge Sharon L. Feldman (ALJ Feldman) is assigned to preside over Case No. U-18322. DTE Electric’s rate case docket is Case No. U-18255. ALJ Eyster is assigned to preside over Case No. U-18255.

341, MCL 460.6w(8) to demonstrate that it owns or has contractual rights to sufficient capacity to meet its capacity obligations under the law. The Commission has determined that technical conferences, rather than piecemeal litigation that cannot involve all of the affected energy providers at the same time, are a sounder method to determine this issue.

It is clear from review of Section 6w(8) of Act 341, MCL 460.6w(8) that the Legislature has not required the Commission to conduct contested case proceedings to resolve the issue of what should be counted by the Commission in making the capacity demonstration determinations required by Sections 6w(8)(a) and 6w(8)(b) of Act 341, MCL 460.6w(8)(a) and (b). In both Sections 6w(8)(a) and 6w(8)(b) of Act 341, MCL 460.6w(8)(a) and (b), the Legislature used the phrase “in a format determined by the commission” when describing how the capacity demonstrations should be reviewed. In neither of these statutory provisions did the Legislature indicate that the selection of the appropriate format for the Commission to review any energy provider’s capacity demonstration must be adjudicated in a contested case pursuant to Chapter 4 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.271 to 24.287.⁷

The collaborative effort to be followed in the technical conferences established in the March 10 order avoids piecemeal adjudications, involves all affected providers in the same forum, and promotes adoption of a uniform format for the Commission to use in analyzing whether an electric provider of any type has met its obligation to demonstrate that it owns or has contractual rights to

⁷ It should be noted that in Sections 6w(1), (2), and (3) of Act 341, MCL 460.6w(1), (2), and (3), the Legislature explicitly required the Commission to conduct contested case proceedings for other determinations. The Commission finds that the Legislature’s failure to add a contested case requirement anywhere in Section 6w(8) of Act 341, MCL 460.6w(8), is an indication that the Commission has a firm basis for requiring the determination of the format for capacity demonstrations to be resolved in the technical conferences as provided in the March 10 order.

sufficient capacity for the planning year beginning four years after the beginning of the current planning year.

The Commission endeavors to clarify that while Consumers and DTE Electric have included positions on issues related to the term and amount of their SRM capacity charges in Case No. U-18322 for Consumers and Case No. U-18255 for DTE Electric, these issues belong in the utilities' SRM cases, not their currently pending rate cases. Additionally, the Commission also intends to provide guidance to both ALJ Eyster and ALJ Feldman that they need not address SRM issues in Case Nos. U-18255 and U-18322.

Having clarified that establishment of the format for the capacity demonstration process shall be handled solely in the Case No. U-18197 resource adequacy docket via technical conferences, made clear that these issues are not to be decided in the open SRM or electric rate cases, and directed that certain of the SRM capacity charge issues shall not be litigated in the pending electric rate cases for Consumers and DTE Electric, the Commission turns to the task of providing further direction regarding the Commission's expectations of the stakeholders participating in the technical conferences and the timetable for those participants to complete the tasks described in the remainder of this order.

First, the Commission finds that the stakeholders should be given an immediate opportunity to provide comments and reply comments regarding the following threshold issues:

1. Should the schedule laid out in Section 6w(8), MCL 460.6w(8) for capacity demonstrations be adhered to, or should any of these deadlines be adjusted as allowed under Section 6w(10), MCL 460.6w(10) to ensure proper alignment with MISO's procedures and requirements? If a stakeholder recommends that the dates should be adjusted, please describe what revisions should be made.

2. Should there be a uniform methodology for capacity demonstration, both among types of providers (investor-owned utilities, rural electric cooperatives, municipally-owned utilities, and AESs) and among service territories?

3. Should there be a “locational requirement” for resources used to satisfy capacity obligations, and if so, should individual load serving entities (LSEs) be required to demonstrate a share of the overall locational requirement?

Initial stakeholder comments on these three issues shall be filed in this docket by 5:00 p.m. on May 26, 2017. Reply comments shall be filed by 5:00 p.m. on June 5, 2017. On June 15, 2017, the Commission intends to issue an order in Case No. U-18197 to provide guidance regarding these three threshold issues based on the comments and reply comments received.

The Staff has arranged a technical conference for June 8, 2017. The conference is scheduled to begin at 10:00 a.m. and to end by 4:00 p.m. It will be held in the Commission’s offices, 7109 West Saginaw Highway, Lansing, Michigan 48917. Arrangements are being made for in-person attendance by stakeholders who wish to travel to the venue, and for remote attendance through telephone and/or internet participation. The Staff will post an announcement of the details of the June 8th technical conference via notices in the docket for Case No. U-18197, on the Commission’s webpage devoted to information about the implementation of Acts 341 and 342,⁸ and by e-mail to the stakeholders. The Staff intends to use the morning session to introduce additional issues that may be discussed during later technical conferences.⁹ The afternoon session of the June 8th technical conference will include an informational presentation by a representative from MISO.

Finally, at the June 8th technical conference the Staff will provide additional details regarding three additional technical conferences that have been scheduled to take place on June 29-30, 2017, and July 10, 2017.

⁸ Interested persons may access this webpage at http://www.michigan.gov/mpsc/0,4639,7-159-16400_79103-406252--,00.html or at [PA 341 Resource Adequacy Web Page](#) .

⁹ A sampling of the types of questions that will be introduced by the Staff at the June 8, 2017 technical conference appears on Attachment A to this order.

The Commission has determined that on August 1, 2017, the Staff shall file and broadly distribute a Staff Report and Recommendations regarding the accomplishments achieved during the technical conferences. The Staff shall also fully and fairly explain any unresolved issues that remain for the Commission's consideration.

On August 15, 2017, interested persons may file comments regarding the Staff's August 1, 2017 Staff Report and Recommendations. On August 30, 2017, interested persons may file reply comments.

Following the Commission's review of the Staff Report and Recommendations, the initial comments, and the reply comments, the Commission intends to issue an order at the regularly scheduled Commission meeting on September 28, 2017, that will make the final determinations required by Section 6w of Act 341, MCL 460.6w for establishment of the capacity demonstration process required under the SRM provisions of Act 341.

The Commission encourages interested persons to submit initial comments in response to the threshold questions posed in this order by 5:00 p.m. on May 26, 2017. All reply comments must be filed with the Commission by 5:00 p.m. on June 5, 2017. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to mpscedockets@michigan.gov. All comments should reference Case No. U-18197. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. In Case Nos. U-18239 and U-18248, Administrative Law Judge Mark D. Eyster need not address the State Reliability Mechanism issues that the Commission has indicated in this order

will be resolved by the Commission through technical conferences to be conducted by the Commission Staff in Case No. U-18197.

B. In Case No. U-18255 and Case No. U-18322, Administrative Law Judge Mark D. Eyster and Administrative Law Judge Sharon L. Feldman need not address the issues regarding billing and calculation of the State Reliability Mechanism capacity charge that the Commission has indicated in this order shall be resolved by the Commission's final orders in Case Nos. U-18239 and U-18248.

C. Interested persons shall file initial comments to the threshold questions posed in this order by 5:00 p.m. on May 26, 2017. All reply comments shall be filed with the Commission by 5:00 p.m. on June 5, 2017. All comments should reference Case No. U-18197. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure.

D. The Commission Staff shall conduct technical conferences on June 8, 29, 30, and July 10, 2017, as more fully addressed in the order.

E. On August 1, 2017, the Commission Staff shall file and distribute a Staff Report and Recommendations regarding the results of the technical conferences as described in this order.

F. On August 15, 2017, interested persons may file comments regarding the Staff's Staff Report and Recommendations.

G. On August 30, 2017, interested persons may file reply comments regarding the Staff's Report and Recommendations.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of May 11, 2017.

Kavita Kale, Executive Secretary

ADDITIONAL ISSUES FOR THE TECHNICAL CONFERENCES

How should capacity obligations change if customers change suppliers?

What type of proof should be required to verify any changes in load over the 4 year period for AESs? Is that necessary to track?

What level of proof should be required that capacity is owned or under contract and will not be sold in the interim as part of a capacity demonstration? Is a signed affidavit sufficient? If not, what level of proof should be required?

What level of proof should be required in order to count existing or proposed energy efficiency or demand response or demand-side management programs towards meeting capacity obligations?

What level of proof should be required in order to count newly proposed generation resources towards meeting capacity obligations? Signed generator-interconnection agreement before it could be counted? Signed affidavit including schedule to receive permits, approvals and complete construction ahead of the 4-year forward obligation?

If a small portion of the capacity obligation is allowed to be obtained in the MISO PRA to account for fluctuations in capacity obligations, is it possible to determine if those ZRCs purchased in the auction can be traced to generation that is physically located in Zone 7? If not, should ZRCs obtained in the PRA count towards meeting any portion of any potential LCR obligation or strictly PRMR obligation?

How transparent should the capacity demonstration process be?

Should the capacity demonstrations be contestable by other parties?

Would the most recently released LCR and PRMR by MISO for the prompt year be reasonably used for setting capacity obligations that are four years forward? If not, what is an appropriate methodology for determining the capacity obligations pursuant to MCL 460.6w?

In the case where an entity does not meet its capacity obligations, should the entity be required to include any information regarding which customer loads do not have capacity to meet the obligations?

If an AES meets its PRMR but not an LCR obligation, as applicable, is all of that entity's load to be covered by the SRM with capacity provided by a utility or is another remedy appropriate?

What avenues exist for AES customers in Michigan to meet capacity obligations through demand reductions or demand response?

If an entity does not meet its capacity obligations 4 years forward to the MPSC, at what point in time do the requirements for that AES to participate in the PRA to cover that load end?